



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
TE/GE EO EXAMINATIONS  
1100 COMMERCE ST. MAIL STOP 4920 DAL  
DALLAS, TEXAS 75242

501.09-02

Number: **201330039**  
Release Date: 7/26/2013

DATE: February 20, 2013

LEGEND

ORG - Organization name  
XX - Date Address - address

ORG  
ADDRESS

Taxpayer Identification Number:  
Person to Contact:  
Employee Identification Number:  
Contact Numbers:  
(Phone)  
(Fax)

**CERTIFIED MAIL**

Dear :

This is a final determination regarding your foundation classification. This letter modifies our letter to you dated July 11, 19XX, in which we determined that you were an organization described in sections 509(a)(2) of the Internal Revenue Code (Code).

Based on your sources of support, we have determined that you are not a private foundation within the meaning of section 509(a) of the Code because you are an organization of the type described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code, effective January 1, 20XX. Your tax exempt status under section 501(c)(3) of the Internal Revenue Code is not affected.

The modification of your foundation status was made for the following reason(s):

You are an organization that normally receives a substantial part of its support from a governmental unit or from the public. While the majority of your income is from admission receipts, merchandise sales, and the provision of services, your sources of public support from gifts, grants, and contributions were in excess of the one third of total support requirement, as computed under section 170(b)(1)(A)(vi) of the Code.

Grantors and contributors may rely on this determination, unless the Internal Revenue Service publishes a notice to the contrary. Because this letter could help resolve any questions about your private foundation status, please keep it with your permanent records.

Processing of tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: United States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed before the 91<sup>st</sup> day after the date this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the courts at the following addresses:

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Nanette M. Downing  
Director, EO Examinations

Enclosures:

Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*  
Form 6018, *Consent to Proposed Action - Section 7428*  
Return envelope

**Internal Revenue Service**  
**Tax Exempt and Government Entities Division**  
Exempt Organizations: Examinations  
1100 Commerce Street  
Dallas, TX 75242

**Department of the Treasury**

Date: April 25, 2012

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

ORG  
ADDRESS

**Certified Mail – Return Receipt Requested**

Dear \_\_\_\_\_ :

We have enclosed a copy of our report of examination explaining why we propose modifying your foundation status under section 509(a) of the Internal Revenue Code (Code).

Your exempt status under section 501(c)(3) of the Code is still in effect.

If you accept our findings, please sign and return one copy of Form 6018. We will issue a final letter modifying your foundation status.

If you do not agree with our proposed modification of your foundation status, you may provide additional information that you would like to have considered, or you may submit a written appeal. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

If you request a conference with Appeals, you must submit a written protest within 30 days from the date of this letter. An Appeals officer will review your case. The Appeals Office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final letter.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing  
Director, EO Examinations

Enclosures:  
Publication 3498  
Publication 892  
Report of Examination  
Form 6018 (2)

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>		Schedule number or exhibit
Name of taxpayer <b>ORG</b>	Tax Identification Number <b>EIN</b>	Year/Period ended <b>December 31, 20XX</b>	

#### LEGEND

ORG - Organization name      XX - Date

#### ISSUES

Is the ORG (the organization) properly classified with a private foundation status of 509(a)(2) or should the classification be changed to 509(a)(1)?

#### FACTS

The organization is a museum, currently classified as a 509(a)(2) organization.

Income is received in the form of grants and contributions, exempt function income, membership dues and a small amount of investment income. Exempt function income includes admission fees, guided tours, viewing parties, educational workshops and exhibitions. Membership dues are considered exempt function income as members receive benefits in the form of general and special event admissions, program and workshop discounts and guest passes.

Income for the year ending December 31, 20XX included:

- Gifts, Grants and Contributions      \$
- Exempt Function Income                \$
- Investment Income                        \$
- Other Income                                \$

Total income for the years 20XX through 20XX included:

- Gifts, Grants and Contributions      \$
- Exempt Function Income                \$
- Investment Income                        \$
- Other Income                                \$

#### LAW

Organizations exempt under IRC Section 501(c)(3) are classified as either public charities or private foundations. Unless an organization can establish that it qualifies as a public charity described in Section 509(a)(1), (2) or (3), it is classified as a private foundation.

In order to be classified as a public charity as described in Section 509(a)(1) an organization must receive a substantial part of its income in the form of contributions from publicly supported organizations, from a governmental unit or from the general public.

To qualify as "other than a private foundation" under section 509(a)(1) as a "publicly supported" organization, an organization must be able to show that "normally" it EITHER receives at least one-third of its "financial support" from a combination of the "general public" and public charities and government, OR that it receives at least 10% from these sources and meets various other tests (e.g., has a broadly representative board of directors, and actively looks for money). In order to be classified as a public charity as described in Sections 509(a)(2), an organization must receive more than one-third of its support in each taxable year from any combination of gifts,

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
Name of taxpayer <b>ORG</b>	Tax Identification Number <b>EIN</b>	Year/Period ended <b>December 31, 20XX</b>

grants, contributions, or membership and gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business.

To qualify as "other than a private foundation" under section 509(a)(2) as a "publicly supported" organization, an organization must pass the "1/3" and "not more than 1/3" tests. It doesn't get a 10% exception.

A 509(a)(2) organization has a 1/3 public support test similar to that of a 509(a)(1) organization but with some major differences. It DOES include in its numerator not only gifts and grants, but receipts from exempt activities. The organization must also pass another test: it is prohibited from having more than 1/3 of its income come from a combination of investment income and net unrelated business income.

According to Treasury Regulation 1.170A-9(f)(7)(ii), an organization receiving income from exempt function activity is not precluded from meeting the public support requirements of 509(a)(1) and 170(b)(1)(A)(vi) unless "almost all" (generally 95% or more) of its support is in the form of exempt function income.

Treasury Regulation 1-509(a)-6 states that if an organization is described in section 509(a)(1) and also in another paragraph of section 509(a), it will be treated as described in section 509(a)(1).

## DISCUSSION OF LAW

### Taxpayer's Position

The organization has filed Schedule A of Form 990 for the years ending December 31, 20XX, 20XX and 20XX indicating its reason for not being a private foundation is because it is an organization that normally receives a substantial part of its support from a governmental unit or from the general public as described in Section 170(b)(1)(A)(vi). It is apparent that the organization agrees that it should be properly classified as an organization described in 509(a)(1).

### Government's Position

The organization passes the public support test for a 509(a)(1) organization as well as both the public support and gross investment tests for a 509(a)(2) organization. The organization receives approximately only % – % of its total support in the form of exempt function. Therefore, it is the government's position that the organization qualifies to be classified under IRC 509(a)(1) and 170(b)(1)(A)(vi).

## CONCLUSION

The ORG will be reclassified as an organization described in IRC Section 509(a)(1).